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on the theory that the donor intended a way to the navigable highway, whatever its bounds. *Hoboken Land, etc., Co. v. Mayor, etc., of Hoboken*, 36 N. J. L. 540. And the decision here seems sound in its averment that a street to a shifting water-mark was contemplated, and that allowance was made in the condemnation proceedings for the extension of the soil. No decisions were found in regard to accretion upon property subject to a private right of way; but it seems clear that the creation of rights by grant and covenant are subject to the same inferences as is their creation by dedication and eminent domain proceedings. *Cf. Lockwood v. New York, etc., Railroad Co.*, 37 Conn. 387. Easements, public or private, by prescription, present a harder case; for it is difficult to conceive of constructive adverse use of property which throughout the period of prescription was not in existence.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — SUIT AGAINST STATE DISPENSARY COMMISSION. — The Legislature of South Carolina created a commission to wind up the affairs of the state liquor business. The complainants, who claimed for liquor sold to the state, sued the commission in the federal court for an accounting, an injunction, and a receivership. *Held*, that the suit is one against the state within the prohibition of the Eleventh Amendment. *Murray v. Wilson Distilling Co.*, U. S. Sup. Ct., Apr. 5, 1909. This decision reverses the decision of the lower court discussed in 22 HARV. L. REV. 289.

FEDERAL COURTS — RELATIONS OF STATE AND FEDERAL COURTS — EFFECT OF CONFORMITY STATUTE ON COMMON LAW RULES OF EVIDENCE. — Rev. Stat. U. S. 1878, § 721, enacts that the laws of the several states, except where the Constitution, treaties, and statutes of the United States otherwise provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply. And § 858, after enumerating certain exceptions, adds that in all other respects the laws of the states shall be the rules of decision as to the competency of witnesses. *Held*, that whether the common law power of a court to compel a plaintiff to submit to a surgical examination be treated as strictly a matter of practice or as involving a question of evidence, in neither case is the federal court bound by the common law decisions of the highest court of the state within which it is sitting. *Chicago & N. W. Ry. Co. v. Kendall*, 167 Fed. 62 (C. C. A., Eighth Circ.).

Rev. Stat. U. S. 1878, §§ 721 and 858, have been construed to include state statutes as to evidence in civil trials. *Conn. Mutual Life Ins. Co. v. Union Trust Co.*, 112 U. S. 253, 254; *Butler v. Fayerweather*, 91 Fed. 458, 460. And there is some authority for treating decisions of the highest state court as equally binding with state statutes. *Stewart v. Morris*, 89 Fed. 290; see *Nashua Savings Bank v. Anglo-American, etc., Co.*, 189 U. S. 221, 228. But these holdings are based upon dicta or cases which deal solely with statutory rules of evidence. See *Ex parte Fisk*, 113 U. S. 713, 720. On the other hand, the federal courts, when presented on appeal with questions of evidence, do not consider state decisions as controlling. *Cf. New Jersey Steamboat Co. v. Brockett*, 121 U. S. 637, 649. The principal case argues that common law rules of evidence are the creation of the courts rather than "laws" within § 721, and that in the absence of statutes federal courts should be independent in this respect. *Cf. Baltimore & Ohio R. Co. v. Baugh*, 149 U. S. 368, 370. It is believed that on grounds of expediency this technical distinction is justifiable; for the great burden and delay to the federal judiciary otherwise necessary would far outweigh the inconvenience to the local bar under the present rule.

GENERAL AVERAGE — INTERESTS LIABLE TO CONTRIBUTION — WHAT LAW GOVERNS. — The master of a vessel chartered for a voyage from New York to Portugal borrowed money on the security of the freight, for necessary expenses, giving his draft therefor. The vessel became disabled and had to be towed from the Azores to Portugal, for which salvage service a large recovery was had in England. According to New York law the master's draft, or bottomry bond, is